

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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Commissioner

In the Matter of the Application of Calpine
Corporation for a Certificate of Need for a
Large Electric Generating Facility

ISSUE DATE: February 6, 2004

DOCKET NO. IP-6345/CN-03-1884

ORDER GRANTING EXEMPTIONS FROM
FILING REQUIREMENTS AND LIMITING
SCOPE

PROCEDURAL HISTORY

On November 14, 2003, Calpine Corporation (Calpine) filed a petition stating that it intended to submit an application for a certificate of need to construct a natural-gas-fired combined cycle electric-generating facility at a site near Mankato. The petition requested exemptions from certain data requirements in the certificate of need rules,¹ claiming that the data in issue is not applicable to a generation project proposed by an independent power producer, not reasonably available to Calpine or not necessary to determine the need for the proposed facility.

Calpine's petition also requested that the Commission confirm that the scope of the required data should relate only to power generated for the wholesale market, excluding data related to power production already certified through a Commission-approved resource plan solicitation.²

In its December 26, 2003 ORDER VARYING RULE AND EXTENDING TIME LINE FOR COMMISSION ACTION, the Commission extended the time period to review Calpine's exemption request.

On December 29, 2003, the Department of Commerce (DOC) filed comments.

¹ Minn. Rules, parts 7849.0010 et seq.

² See Minn. Stat. § 216B.2422, subd. 5.

Calpine filed reply comments on January 8, 2004.

This matter came before the Commission on January 22, 2004.

FINDINGS AND CONCLUSIONS

I. The Proposed Project

Calpine proposed building a power plant using natural gas-fired combustion turbines in a combined cycle configuration, which will be capable of producing approximately 630 megawatts (MW) of power. The facility will use natural gas with low-sulfur distillate oil as a back-up fuel. It will include two combustion turbine generators, two heat recovery steam generators equipped with duct burners, one steam turbine with an associated heat rejection system, and various other machinery and equipment.

The facility site is approximately 25 acres in size and is located north of the Mankato city limits within Lime Township. It will connect to the Northern Natural Gas pipeline approximately four miles east of the site and will have direct access to the transmission grid at the Wilmarth Substation approximately 1,500 feet west of the site.

Calpine has committed to supply approximately 375 megawatts of power to Northern States Power (NSP) after being selected in a bidding process approved by the Commission in its acceptance of NSP's resource planning process.³ The portion of the facility that will supply the Commission approved power to NSP consists of one combustion turbine generator, one heat recovery steam generator, one steam turbine generator, one condenser, one multi-cell evaporative cooling tower and other appurtenant machinery and equipment.

Calpine will offer the power not committed to NSP to wholesale customers, including Minnesota utilities and cooperatives. Calpine seeks a Certificate of Need for the wholesale power production of the facility. The portion of the facility that will generate the wholesale power will include an additional combustion turbine generator and an additional heat recovery steam generator. The steam generator used for the power committed to NSP will also be used for the power to be sold to wholesale customers.

Calpine is planning to have the facility in-service by mid-2006.

³ See ORDER APPROVING XCEL ENERGY'S 2000-2014, Docket E-002/RP-00-787, *In the Matter of Northern States Power Company's Application for Approval of its 2000-2014 Resource Plan*.

II. The Legal Standard

The filing requirements for certificate of need applications are comprehensive and detailed. Because the certificate of need rules apply to a broad range of projects, the rules explicitly permit applicants to request exemptions from filing requirements that are inappropriate in individual cases. These rules permit the Commission to grant exemptions when the data requirements at issue (1) are unnecessary to determine need in a specific case; or (2) can be satisfied by submitting documents other than those required in the rules. Minn. Rules 7849.0200, subp. 6.

Further, Minnesota Statutes provide that an electric power generating plant selected in a bidding process approved by the Commission is exempt from the Certificate of Need proceeding. Minn. Stat. § 216B.2422, subd. 5(c).

III. Positions of the Parties

A. Calpine

1. Data Exemption Request

Calpine requested that the Commission grant it exemptions from certain certificate of need data requirements that, it argued, were not necessary to determine the need for an independent power production facility.

Calpine stated that the Commission has granted exemptions to data requirements in other cases involving independent utility generators where required data could not be readily obtained, was inapplicable to an independent power producer's plant or was not necessary to determine need.⁴

Calpine argued that as an independent power producer its ultimate customers are not end-user consumers and that Calpine has neither an assigned service area nor a system.⁵ Therefore, information related to these components of the rules is either non-existent or not relevant and is not necessary to determine the need for the facility.

Calpine stated its intention to submit, where applicable, state or regional data relevant to assessing the need for the facility.

⁴ See *In the Matter of the Application by Koch Refining Co. for Certification of the Pine Bend Cogeneration Project*, Docket No. IP-2/CN-95-1406; *In the Matter of the Application of Lakefield Junction LLC for a Certificate of Need for a Large Electric Generating Facility*, Docket No. IP-3/CN-98-1453; *In the Matter of the Application by LSP-Cottage Grove L.P. for a Certificate of Need for a Large Generating Facility*, Docket No. IP-1/CN-94-004; *In re Rapids Power LLC*, Docket No. IP-4/CN-01-1306.

⁵ As defined in Minn. Rules part 7849.0010, subp.29.

At hearing, Calpine stated that it will address, in general terms, the aspects of the alternatives analysis that the DOC raised. Calpine also agreed to give a full description of the project itself even though part of the project is subject to the all-source bidding project with Xcel.

2. Request for Determination of the Scope of Data Required

Calpine requested that the Commission determine that the scope of the data required in the Certificate of Need application relate only to power Calpine would generate for the wholesale market and to the additional facilities associated with supplying that power. The data required would not relate to the approximately 375 megawatts of power to be supplied to Xcel pursuant to the competitive bidding process.

Calpine stated that the additional facilities for wholesale power would be an additional combustion turbine generator and a heat recovery steam generator. All other machinery and equipment associated with the supply of wholesale power would be shared with the equipment already in place to supply the power pursuant to the all-source bidding project with Xcel.

In response to the DOC's recommendation that the certificate of need proceeding focus on the incremental impact of the addition of a wholesale power element to the project, Calpine indicated it had no objection to this provided the demonstration of need is limited to the wholesale portion of the facility and the natural gas required to generate that power.

B. The DOC

1. Regarding the Data Exemption Request

The DOC agreed, with two exceptions, that the exemptions requested by Calpine be granted. It agreed that for many of these the references to a system makes the data inapplicable to Calpine. The DOC noted that in several instances Calpine has offered to supply alternative information.

The DOC recommended that for Minn. Rules part 7849.0250 B1 and B3, which require addressing the availability of alternatives, that the Commission deny the exemptions and require Calpine to address, at least in general terms, the fact that purchased power from other sources will not be an alternative to the facility (B1) and that new transmission will not be an alternative to the facility (B3). The DOC argued that the exemption should be denied because Calpine's reasons were not reasonable grounds to grant an exemption.

2. Regarding Calpine's Request to Determine the Scope

The DOC recommended that the certificate of need proceeding focus on the incremental impact of the addition of a wholesale power element to the plant selected in Xcel's all-source bidding process. It argued that although the additional facilities may be limited to a combustion turbine generator and a heat recovery steam generator, the incremental impact may be more widespread

than just the two additional pieces of equipment that Calpine proposes for this facility. For example, the DOC raised the likelihood that the natural gas line will be shared and questioned whether, due to this, the line would be somewhat larger and more costly.

IV. Exemptions Granted

A. Background

The Commission will grant the exemptions requested by the Company on the grounds that the information to which they relate is unnecessary to determine need. The Commission notes that, where applicable, the Company has agreed to file alternative data relevant to the assessment of need.

Most of the filing requirements from which the Company seeks relief pertain to regulated utilities. They speak of the applicant's "system," a term defined in the rules to include the applicant's assigned service area and all equipment and facilities used to serve the retail consumers within that assigned service area.⁶ Since Calpine has neither retail consumers nor an assigned service area, it does not have a system. Therefore, information on Calpine's system does not exist, is not relevant to the application and is not relevant for determining need.

Further, the Company has proposed filing, when applicable, state or regional data relevant to assessing the need for the facility. For example, when the rules call for filing information on the proposed facility's effects on retail rates, the Company will file information on the effects on wholesale rates. The additional information the Company proposes to file will further aid in determining need.

Finally, since the Company must prove need for the proposed facility, the Company has a continuing incentive to provide full and complete information as the application is reviewed.

B. Specific Exemptions

Specifically, the Commission will grant exemptions to the following Minn. Rules:

1. Availability of Alternatives - Minn. Rules 7849.0250 B (1-3)

This rule requires Calpine to discuss the availability of alternatives to the facility, including purchased power, increased efficiency of existing facilities, including transmission lines, and new transmission lines.

Calpine requested an exemption because it does not purchase power, it has no existing facilities in Minnesota at which it might seek improved operating efficiency and does not own or operate any

⁶ Minn. Rules 7849.0010, subp. 29.

transmission lines either within the service area where the facility will be located or anywhere else in the country. Further, it cannot readily obtain data for a discussion of these factors as it relates to facilities operated by other entities.

Calpine stated that it will be discussing the alternatives of a generating facility of a different size or using a different energy source, pursuant to Minn. Rules 7849.0250(B)(4), in addition to discussing aspects of the facility that relate to its efficient operation.

The Commission will grant the exemption, finding that Calpine has stated reasonable grounds and has made an alternative proposal that will add information more specifically related to determining need for the proposed facility. This exemption is granted because the information to which it relates is not necessary to determine need.

2. Effects on Rates Systemwide - Minn. Rules 8749.0250 C(7)

The rule requires an applicant to estimate its facility's effect on rates systemwide and in Minnesota, assuming a test year beginning with the proposed in-service date of the plant.

Calpine requested this exemption because it does not have a "system" as defined in the rules and does not have regulated rates for power it plans to generate. Calpine proposed to submit data on its project's impact on state or regional wholesale prices.

The Commission finds that "system" has the meaning given in the rules and that the Company does not have rates set on the basis of a test year. This non-existent information is not necessary to determine need. Rather, the Company's proposal to submit information on the project's impact on state or regional wholesale rates will serve the purpose of ensuring that the cost of utility service is considered in the certificate of need review.

This exemption is granted because the information to which it relates is not necessary to determine need.

3. System Map - Minn. Rules 8749.0250 D

The rule requires the applicant to file a map of its system. The Company requested an exemption on the grounds that it does not have a system, as defined in the rules. Calpine proposed submitting a map showing the proposed site and its location relative to the power grid and natural gas supplies.

The data required in this rule is unnecessary to determine the need for an independent power producer's plant and the exemption will be granted.

4. Peak Demand and System Capacity - Minn. Rules 7849.0270 and 7849.0280

The rule requires an applicant to submit pertinent data concerning peak demand and projected annual electrical consumption, and system capacity within the applicant's service area and system. The company requested an exemption on the grounds that it does not have a system as defined in the rules.

Calpine stated that it would submit regional demand, consumption, and capacity data from credible sources to demonstrate the need for the independently produced energy that will be generated by the facility. The Commission recognizes that the filing of this alternative information will pertain directly to its intended market, wholesale power sales, and will meet the purposes of the rule.

This exemption is granted because the information to which it relates is not necessary to determine need.

5. Energy and Conservation Plans - Minn. Rules 7840.0290

This rule requires an applicant to describe present and future energy conservation and efficiency plans, including the effect of conservation in reducing the applicant's need for new generation and transmission facilities.

As the Commission has previously noted,⁷ this rule is designed to ensure that a regulated utility give conservation the same consideration that it gives new generation when planning to meet the future needs of its service area. Since Calpine is not a regulated utility, Calpine sought an exemption from this rule. The Commission agrees that different considerations apply in the wholesale context thereby making the requirements of this rule unnecessary.

This exemption is granted because the information to which it relates is unnecessary to determine need.

6. Effect of Delay on Systems and Power Pool - Minn. Rules 7849.0300

This rule requires that the applicant discuss the consequences of a delay in the construction of the proposed facility on the applicant's system, neighboring systems and the power pool. Calpine again indicated that it did not have a service area or system, as defined in the rules. Calpine proposed to submit data on the consequences of delay to its potential customers and the region.

⁷*In the Matter of the Application of Rapids Power LLC for a Certificate of Need for its Grand Rapids Cogeneration Project*, Docket No. IP-4/CN-01-1306, ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS, PERMITTING EXPEDITED FILING, AND EXTENDING PERIOD TO DETERMINE ADEQUACY OF FILING (October 9, 2001).

This exemption is granted because the information to which it relates is not necessary to determine need.

7. The Alternative of No Facility - Minn. Rules 7849.0340

The rule requires that the applicant analyze how not building the proposed facility would impact its generation and transmission facilities, system and operations. The rule also requires an analysis of equipment and measures that may be used to reduce the environmental impact of not building the proposed facility.

Calpine again indicated that it does not have a system as defined in the rules, nor does it have other generation and transmission facilities in Minnesota. Calpine proposed to submit data reasonably available to it regarding the impact on the wholesale market of the “no facility” alternative.

This exemption is granted because the information to which it relates is not necessary to determine need.

8. Relationship to Promotional Activities - Minn. Rules 7849.0240, subp. 2 (B)

This rule requires an applicant to discuss the relationship of the proposed facility to promotional activities that gave rise to the demand for the facility. The Company requested an exemption based on the fact that it had not engaged in any promotional activities and therefore had no data to report.

This requirement is not necessary to determine the need for an independent producer’s project. Therefore, the exemption is granted.

C. Scope of Data Required For Application

The Commission grants Calpine’s request to limit the scope of Calpine’s certificate of need application to data demonstrating a need for the power that the Company will generate for the wholesale market. This would exclude any data related to the approximately 375 MW to be purchased through Xcel’s Commission- approved bidding process. The Commission agrees with Calpine that such a limitation is provided for by Minnesota Statute.

However, the Commission recognizes that it may be difficult to consider only a part of a proposed facility. The Commission, in considering the certificate of need application, may require an understanding of the equipment and machinery used to supply the power committed to Xcel in order to fully understand the project. For this reason, the Commission clarifies that although it may limit the scope of the data required to the power generated for the wholesale market, such a limitation should not be seen by the Company as reason to refuse reasonable requests for information on the project as a whole.

Further, the Commission notes that, as of the date of this Order, a Power Purchase Agreement (PPA) between Xcel and Calpine has not been submitted for Commission approval. Since only the completion of this required final step in the competitive bidding process will give rise to the certificate of need statutory exemption that Calpine requests, the Commission makes its determination on the issue of the scope of the certificate of need filing conditional on Calpine's meeting all requirements for the exemption. This in no way restricts the Company from pursuing both the certificate of need and the final PPA simultaneously.

ORDER

1. The Commission grants the petition of Calpine Corporation for exemptions from specific data requirements in the certificate of need rules as set forth herein.
2. The Commission grants the request of Calpine Corporation to limit the scope of its certificate of need application with the qualifications set forth herein.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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